

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8599 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LIYAKAT HUSSAIN CHHOTUMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.
MR MR PRAJAPATI for the Petitioner .
Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

The petitioner-detenu has challenged the
detention order dated 22.6.2002. Along with the
detention order, he is also served with the grounds of

detention, in which there is a reference about two criminal cases. So far as one case is concerned, the incident had taken place on 29th June, 2001, i.e. one year before passing the detention order. So far as another case is concerned, the date of offence is 27th April, 2002. It is alleged against the petitioner that he is a communally minded person and he is threatening the people in the area and because of his act, communal peace in the area is disturbed. Particulars about the same are given in the detention order.

At the time of hearing of this petition, Mr.Prajapati for the petitioner argued that so far as case No.1 is concerned, the incident is dated 29.6.2001 and the detention order is passed one year thereafter. Still, the case is taken into consideration in passing the detention order. He further submitted that if really the activity of the petitioner was required to be curbed by detaining him immediately, it was not necessary to wait practically for a period of about two months as the second incident is dated 27th April, 2002. Here, the detention order is passed on 22nd June, 2002. He, therefore, submitted that in view of the delay in passing the order after the last incident, the detention order is required to be set aside, as, according to him, even by such delay, the object of detaining a person under preventive detention is lost.

Mr.V.M.Pancholi, learned AGP, however, tried to explain the delay by pointing out paragraph 14 of the affidavit-in-reply.

The learned counsel for the petitioner has placed reliance on the judgment of a learned single Judge of this Court in Special Civil Application No.11428 of 2001. This Court has observed as under in paragraph 6 :-

"

6. Having regard to the contention raised before this Court, the grounds of detention indicate that the detaining authority observed that the detenu is a boot-legger, his activity results in disturbance to public health and public order, action against him under ordinary law will have no effect on him, that it is not possible to prevent him from pursuing his activities by taking action under ordinary law and, therefore, he is required to be immediately detained under PASA.

This subjective satisfaction does not appear to be genuine for the reason that the detaining authority had before him the proposal at least before 20.10.2001, he has verified the statement on 22.10.2001 and, thereafter, order is passed only on 15.11.2001. If the satisfaction recorded by the authority was really genuine, the action would have been taken much earlier and order would have been passed earlier. The satisfaction therefore is not genuine in law. The order of detention therefore, stands vitiated. The petition deserves to be allowed only on this count.

... .."

It is required to be noted that, no doubt, the authority has tried to explain the delay, but the fact remains that so far as the first incident is concerned, the same is a very stale one and the second incident had taken place on 27th April, 2002. If the petitioner is really a "dangerous person", such person is required to be detained forthwith so that there may not be any danger to the society. Under such circumstances, it was not necessary to wait till some witness is available to give statement. Looking to such activity of the petitioner, it was not necessary for the authority to wait upto 22nd June, 2002, as he was required to be detained forthwith from the date of the alleged incident. Delay in such cases, therefore, would, naturally, defeat the entire object of detention, because, the purpose of detaining a person under preventive detention is to see that he may not continue the activity even for a moment. In view of the said fact and in view of the judgment of this Court, this petition deserves to be allowed and it is accordingly allowed on the aforesaid ground of delay in passing the order.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

5th February, 2003 (P.B. Majmudar, J.)

(apj)

